

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

CRL.A.No. 770 of 1999()

ST.172/1994 of MUNSIFF-MAGISTRATE COURT, DEVICOLAM
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PETITIONER

**RANJITH JACOB , SON OF JACOB MATHEW,
MULLASSERIL HOUSE, DEVIKULAM ESTATE,
TATA TEA LTD., MUNNAR P.O.,
K.D.H. VILLAGE.**

BY ADV. DR.K.P.KYLASANATHA PILLAY

RESPONDENT:

**K.K.LEELA,
POSTAL ASSISTANT,
MUNNAR POST OFFICE, K.D.H., VILLAGE.**

**BY ADV. SRI.JOSE DAVIS
PUBLIC PROSECUTOR SRI. AMJAD ALI**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K.R.UDAYABHANU, J

Crl.A.No.770 of 1999

Dated this the 6th day of November, 2007

JUDGMENT

The appellant is the complainant (complainant died before the filing of the appeal herein and his son filed the appeal) who had initiated proceedings under Section 138 of the Negotiable Instruments Act against the respondent/accused. The trial court acquitted the accused.

2. The case of the complainant is that the accused issued the impugned cheque for a sum of Rs.50,000/-. The same was borrowed for the purpose of settlement of final accounts of some land purchased at Adimali and Kanthalloor. The cheque is dated 4.4.1994 which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent sent was received by the accused. But the amount was not repaid.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 3, Exts. P1 to P11, DWs' 1 to 4 and Exts. D1 to D8.

4. The trial court was acquitted the accused only on the ground that in the cross examination of PW1, the complainant, has stated that the cheque was issued as security and not towards repayment of the amount and that the amount was agreed to be paid in cash. I find that the respective contentions and the evidence adduced including the documents produced have not been considered by the court below. In the circumstances, the order of the court below acquitting the accused is set aside. The court below is directed to hear the parties afresh and dispose of the matter on merits after considering the respective contentions of both sides. The matter shall stand posted before the court below on 5.12.2007.

The criminal appeal is disposed of accordingly.

**K.R.UDAYABHANU,
JUDGE**

csl